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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Charles R. Breyer, Judge

RONALD McINTOSH,	)	
	)	
Petitioner,	)	
	)	
VS.	)	NO. C 09-00750 CRB
	)	
ERIC HOLDER and ATTORNEY	)	
GENERAL OF CALIFORNIA,	)	
	)	
Respondents.	)	
_____	)	

San Francisco, California  
Friday, September 11, 2015

**TRANSCRIPT OF PROCEEDINGS**

**APPEARANCES:**

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Reported By: Rhonda L. Aquilina, CSR #9956, RMR, CRR  
Official Court Reporter

Friday - September 11, 2015

10:03 a.m.

P R O C E E D I N G S

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**THE CLERK:** Calling civil Case No. 09-750, Ronald McIntosh versus Eric Holder, et al.

Counsel, please step forward and state your appearances.

**MR. SHAPIRO:** Good morning, Your Honor. David Shapiro for Mr. McIntosh.

**THE COURT:** Good morning.

**MR. WILSON:** Good morning, Your Honor. Doug Wilson, and Wilson Leung on behalf of the United States.

**THE COURT:** Good morning.

**MS. CRITCHFIELD:** Good morning, Your Honor. Pam Critchfield on behalf of the State of California.

**THE COURT:** All right. Good morning. So let's figure out what we have to deal with today. I don't know if we have to do a protective order. Has the government decided are you appealing that, are you not appealing that, where do we stand on that?

**MR. WILSON:** Your Honor, we've reached agreement with Petitioner for a revised protective order which I submitted to you this morning.

**THE COURT:** And that's this (indicating). I mean, I was just handed something.

**MR. WILSON:** If you were just handed it, yes. It's

1 very similar to the one the Court entered with a few additional  
2 provisions.

3 **THE COURT:** And that's by stipulation or agreement  
4 or --

5 **MR. SHAPIRO:** It is, Your Honor. It's -- it doesn't  
6 need to be filed under seal. Mr. Wilson did it out of an  
7 abundance of caution. The original one was not under seal.  
8 It's, instead of --

9 **THE COURT:** I don't really care whether you've filed  
10 it under seal or not, but there is a signed one. So it is what  
11 it is. I mean, you can deal with that as you wish.

12 **MR. WILSON:** Okay. It was received.

13 **THE COURT:** If it was agreed to file it under seal,  
14 file it under seal. If they don't want to file it under  
15 seal -- you know I'm not in favor of filing things under seal,  
16 so, you know, it doesn't hurt anyone particularly. If either  
17 side wants it filed under seal, it will be filed under seal,  
18 because that's what the agreement was, but if either side wants  
19 it, it does not need to be filed under seal.

20 **MR. SHAPIRO:** Right. It wasn't -- the agreement  
21 wasn't to seal it.

22 **THE COURT:** Okay. All right.

23 **MR. SHAPIRO:** My agreement wasn't to seal it.

24 **THE COURT:** Okay. So that issue is over for the time  
25 being.

1           **MR. WILSON:** Yes, Your Honor.

2           **MR. SHAPIRO:** For the time being.

3           **MR. WILSON:** And Mr. Shapiro will be reviewing the  
4 documents that are at issue in the protective order this  
5 morning.

6           **THE COURT:** Okay. So I guess the question is -- well,  
7 there are a couple of questions sort of still outstanding. One  
8 is was the -- is the present state of the declarations that  
9 have been filed in connection with the ongoing discovery  
10 adequate, satisfactory, discharging the obligation of the  
11 defendants to furnish further information about, as I  
12 understand it, the non-existence or the non-location of  
13 particular files; is that -- as I understand it, you can  
14 correct me if I'm wrong, with this protective order in place,  
15 the government has produced -- when I say the government, I  
16 think we're talking about various entities, various defendants,  
17 but they have produced that which they can now presently  
18 locate. Is there something else which they have located but  
19 they haven't produced? My understanding is there is not, but  
20 am I wrong in that regard?

21           **MR. WILSON:** That is our understanding, Your Honor,  
22 that the government has produced everything responsive to  
23 Mr. Shapiro's subpoena and to the Court's discovery order of  
24 last January.

25           **THE COURT:** So in other words, what you have is --

1 what you have produced is what you have. What you have you  
2 have produced. And the remaining question that Mr. Shapiro  
3 asked is, well, you haven't produced everything that in his  
4 mind or his experience existed at one time, so I now want to  
5 take depositions of people to find out whether what happened to  
6 the documents that were in existence in my judgment to, one,  
7 confirm that there was something in existence, and, two, find  
8 out what happened to it. Whether it was destroyed or whether  
9 it simply --

10 **MR. SHAPIRO:** But they didn't look hard enough.

11 **THE COURT:** Well, or that they didn't conduct the  
12 search, an adequate search. And it just strikes me that that  
13 is -- given what now has been produced, that without more, it  
14 strikes me that -- I want to be fair in characterizing it. I  
15 don't want to call it a fishing expedition, but I want to call  
16 it that it is a search for things that may have existed at one  
17 time that don't seem to be there today, and under the passage  
18 of time, we're talking about what, 20, 30 years?

19 **MS. CRITCHFIELD:** Yes.

20 **THE COURT:** The passage of time certainly would in  
21 some manner account for its non-production. I mean, that's  
22 just what happens. Files aren't necessarily, you know, just  
23 kept in perpetuity. This was all at a time that there weren't  
24 digital files, that everything was paper, or perhaps tape  
25 recorded and so forth, and files were discarded just in the

1 ordinary course of new people moving into an office and  
2 cleaning out the Office of things that they aren't going to use  
3 anymore or have any relation to.

4 So I'm just wondering -- you know, I think it's my  
5 tentative view, and I'm going to go back and review this, and  
6 I'll listen to anything anybody has to say, my tentative view  
7 is make your motion, not on the discovery, make your motion on  
8 the underlying case; and, you know, based upon all the  
9 information you receive, and based on the fact I think that  
10 there are certain things out there that you haven't received,  
11 but you can point to, and I'll draw whatever inferences that  
12 are appropriate to draw. But I just think that requiring the  
13 government to fly out, you know, any number of people to take  
14 additional depositions is an extraordinarily expensive  
15 proposition and time-consuming and a use of resources that  
16 absent -- absent a real, solid justification for it doesn't  
17 seem to me worthwhile.

18 Now, I'll listen to you, Mr. Shapiro, but I wanted to say  
19 to you that you have the laboring oar here to try to convince  
20 me that somehow your client is not getting a fair hearing if I  
21 don't require any of these steps that you have suggested,  
22 because I think that a lot of things have been turned over that  
23 you knew exist, maybe not enough.

24 **MR. SHAPIRO:** No, that's a misimpression, and let's  
25 start with the federal government. We can talk about the state

1 afterwards.

2 The state certainly has turned over a lot. I'm not  
3 disputing that the state didn't turn over a lot of documents.

4 What I have gotten from now from these four federal  
5 agencies is virtually zero about Ronald Raiton, so I got 2,000  
6 pages from the FBI about Ron McIntosh's escape case. The FBI  
7 managed to save all those files about my client's escape case.  
8 They have produced nothing about Ronald Raiton's organization  
9 in Philadelphia. He was a major witness in multiple cases.

10 And I know, and the Court --

11 **THE COURT:** But they're quite different, aren't they?  
12 I mean -- and let me just explain this to you. An escape case,  
13 it does not surprise me that they have a lot of documents about  
14 the escape case. That is X, it's an escape case. Now what  
15 you're saying is, well, we got all that, they preserved all  
16 that, but they didn't preserve or you haven't seen the evidence  
17 of his, quote, cooperation, pre-escape; right?

18 **MR. SHAPIRO:** No, no, no, I'm sorry.

19 **THE COURT:** I mean, is that not right?

20 **MR. SHAPIRO:** No, that's not what I'm saying.

21 What I'm saying is there is a case against McIntosh  
22 totally separate from his homicide case. He flew a helicopter  
23 in and, quote-unquote, saved his girlfriend from Pleasanton.  
24 They made a movie about it. That was a completely different  
25 case. He was sitting in prison at the time he got charged for

1 the homicide. Okay. Ronald Raiton had nothing to do with that  
2 case. Ronald Raiton became really the only witness against him  
3 in the homicide case, and he was allowed to come in and testify  
4 about what this psychopath had said out of court.

5 So one of the things was --

6 **THE COURT:** Chronologically where did that fit in with  
7 the escape?

8 **MR. SHAPIRO:** The escape was I think 1988. The  
9 trial -- or '87. He was sitting in prison. He gets charged.  
10 He went to trial in 1990, and he was convicted.

11 **THE COURT:** And you have the papers from all of that.

12 **MR. SHAPIRO:** I have the state papers.

13 So Ronald Raiton was the main witness. There is virtually  
14 nothing in the state documents. There isn't even a rap sheet  
15 for Ronald Raiton in the state documents that I got from the  
16 state. So I said, well, FBI, turn over the 302s and the  
17 historical reports about Raiton's involvement in the  
18 methamphetamine distribution business in Philadelphia and all  
19 your associates. It has nothing with him being an informant or  
20 not an informant, he was a witness; right? They never produced  
21 it before the trial, and that's what I subpoenaed now.

22 And I cannot believe that the FBI destroyed it. They  
23 don't destroy that stuff. And as I pointed out in my reply,  
24 they didn't even look in the index that applies to older cases.  
25 They looked in a current index that the attorney for the FBI



1 said, well, it's outdated anyway.

2 So it doesn't make any sense that you would have a  
3 relatively minor case maybe, you know, TV worthy escape case,  
4 and then this mafia case: Oh, we destroyed it all. But they  
5 don't even say what happened to all those 302s. That's just  
6 the FBI.

7 And then, on top of that, they redacted things they gave  
8 me under FOIA. That's utterly ridiculous. So that's just the  
9 FBI, and that doesn't make any sense, and that's why  
10 Ms. Porcelli, or Porcelli's declaration that purports to sort  
11 of outline what she did, it's not complete.

12 Now, maybe I don't have to have a deposition, but I don't  
13 know how I get to yes, there used to be 302s about Ronald  
14 Raiton and his P2P and methamphetamine organization and the  
15 Scarfo crime family, we destroyed those in -- tell me what  
16 year. That's what I want to know.

17 **THE COURT:** Okay. So what -- Mr. Wilson, go ahead.

18 **MR. WILSON:** Well, Your Honor, all I can say is that  
19 the FBI has bent over backwards to try to find documents  
20 responsive to Mr. Shapiro's subpoenas, and they have not found  
21 anything.

22 I cannot -- I didn't conduct the search, Mr. Leung didn't  
23 conduct the search, the FBI conducted the search, and we don't  
24 actually know everything that they've looked for, but they have  
25 tried very hard to comply with the subpoenas.

1           **THE COURT:** Okay. But what Mr. Shapiro says is that  
2 to the best of his knowledge, based upon his experience, which  
3 is not so different from your experience, the FBI, one, would  
4 not have destroyed these files, and two, that according to the  
5 information he has received in terms of the scope of the  
6 search, that it seems to be either inadequate or wrong headed  
7 or so forth.

8           I mean, I might want to try to put this thing to rest.  
9 I'm sure you do too, everybody does, and I do not want to do  
10 depositions. And it just seems to me -- I don't quite know how  
11 to get to it. I do need to resolve the issue as to whether or  
12 not -- as to the scope of the search conducted by the FBI. You  
13 know, I need to -- I'm not saying we have to find documents  
14 that have been discarded, you know, and so forth. I am saying  
15 that at least you have to look in the places that traditionally  
16 these documents would be found.

17           And I sort of turn to you, Mr. Wilson, because,  
18 number one, I have great respect for you, and number two, you  
19 don't want to prolong this anymore than anybody else wants to  
20 prolong it. So I think that through your contacts, you can  
21 satisfy, at least satisfy yourself, and then you can tell  
22 Mr. Shapiro, and if necessary the Court, what happened in this  
23 case. That is to say, what was the scope of the search, and  
24 two, if there is something that it can be produced under a  
25 protective order, and if there isn't, why there isn't, and I

1 don't think you have answers to those questions standing in  
2 front of me today.

3 **MR. WILSON:** Well, Your Honor, and I do not have  
4 complete answers. But I also think that, with all due respect,  
5 the Court is going a little further than the Court usually  
6 does. In a *Brady* case, for example, we turn to the FBI, and we  
7 say we need all the *Brady* material, and the FBI conducts its on  
8 search. We don't ask the FBI what it searched. We don't ask  
9 the FBI to search in particular places. They are responsible  
10 for coming up with responsive material.

11 **THE COURT:** But at least I want a definition from them  
12 as to how they conducted the search. I'm not going to tell  
13 them how to conduct the search. I'm not going to have them  
14 deposed as to how they conduct the search. But an individual  
15 who is asked, when you ask them, we need all the X materials,  
16 and he writes back there are no documents in response to your  
17 request, I want him to say: I went to the place where the X  
18 materials in the normal course of business would be kept for  
19 this period of time, and so forth, and found no documents.  
20 Something like that.

21 You know, I mean, listen, everybody is busy in this -- you  
22 know, but I do need to address that particular issue so that we  
23 can get on with the question of whether or not relief in this  
24 case should be granted. That's the ultimate question. And the  
25 government certainly takes the position that it ought not to

1 be, and yet the case goes on and on.

2 You know, look, I may be guilty of, quote, prolonging it,  
3 but I want to satisfy myself that whatever information -- I  
4 don't -- I'm not so interested in why information isn't there,  
5 because I just think over the passage of time these things  
6 happen. But I want to be satisfied that the traditional ways  
7 of looking for the information were followed in this particular  
8 case. I think there's a presumption they were, I understand  
9 that. But on the other hand, I think that counsel has raised  
10 some questions which he is entitled to have some responses.  
11 And when he goes in and he says, well, they went and they  
12 looked at the file that one wouldn't expect a closed case, I  
13 guess that's what you're saying, Mr. Shapiro, closed case to  
14 have the files be sought would be located.

15 You know, I was not in the FBI, I wasn't even in the U.S.  
16 Attorneys' Office, you know, but I'm looking to people who all  
17 were in the U.S. Attorneys' Office, and still are. And so, you  
18 know, it's like asking you, well, you look in your office, you  
19 know, this isn't your office, it's the FBI's office, but you  
20 know how these things work.

21 So I would love to see -- and maybe the line of  
22 communication ought to be between the two of you to see whether  
23 or not you can get that type of declaration from the custodian  
24 of records. That seems to be fairly straight forward.

25 **MR. WILSON:** So just to be clear, Your Honor, the

1 Court believes that between Mr. Shapiro and I, or file, we  
2 should produce a declaration from the FBI and personnel people  
3 or personal personnel who conducted the search that details the  
4 extent of the search.

5 **THE COURT:** But I want to augment that, because  
6 Mr. Shapiro has pointed out that the place where the individual  
7 from the FBI searched is in his opinion not the place that one  
8 would find the records, necessarily find the records. It could  
9 have been, but not necessarily. So I think I'd like to augment  
10 it by Mr. Shapiro's suggesting to you that this agent or  
11 custodian should look at X, Y, or Z, and if that's appropriate,  
12 that is, it's the sort of thing that this custodian would have  
13 access to or a custodian in the Federal Bureau of Investigation  
14 have access to, then do it, then do it.

15 **MR. SHAPIRO:** Yes. I'm sorry. Did I interrupt?

16 **THE COURT:** No, no, not really. I'm just trying --  
17 you know, this is like a discovery session. I mean, I don't  
18 even do this thing routinely, and maybe this points out why I  
19 shouldn't, but --

20 **MR. SHAPIRO:** Your Honor, if we can have a discussion,  
21 we meaning Mr. Wilson and me can have a discussion...

22 **THE COURT:** You've met each other.

23 **MR. SHAPIRO:** Yeah, we know each other. Yes, we know  
24 each other.

25 **THE COURT:** Okay. Okay.

1           **MR. SHAPIRO:** And talk about what it is that they  
2 looked for, why it doesn't exist, what happened to it, when it  
3 was destroyed, all those things, and he can understand what I'm  
4 looking for, and maybe I could even have on the phone  
5 Ms. Porcelli, who was the one who was the lead internal FBI  
6 lawyer who was looking for documents, although she evidently --

7           **THE COURT:** Well, I must say, I want the government to  
8 conduct -- I mean, I don't want to start putting these people  
9 on the phone. I don't want to start having depositions. I  
10 trust Mr. Wilson when he -- you know, as long as the two of you  
11 are communicating, and it's clear what you are saying to one  
12 another, then I turn it over to Mr. Wilson to discuss things  
13 with the FBI. Mr. Wilson -- if Mr. Wilson knows or has reason  
14 to believe of the existence of a document that's going to be  
15 required, he'll give it to you. He'll find it. He's not going  
16 to cover it up, and so I'm perfectly satisfied with a person  
17 who you aren't going to speak to.

18           So what I'm directing you to do is to go to the Charles R.  
19 Breyer attorneys lounge now on the 18th floor, get a cup of  
20 coffee, and sit down and have a discussion, okay, and then just  
21 tell me if you need me to do anything.

22           **MR. SHAPIRO:** That -- I would like that to apply to  
23 the ATF as well as to the U.S. Marshal's Service.

24           **THE COURT:** Well, whatever, whatever. The ATF, I  
25 don't know, do you have any interaction with the ATF on this

1 case?

2 **MR. WILSON:** I have not had any -- I mean, the ATF  
3 supplied, I believe, 350 documents, pages of documents.

4 **THE COURT:** Well, but I mean are you the person who  
5 deals with the ATF?

6 **MR. WILSON:** I have not dealt with them until -- I  
7 have not dealt with the ATF or the Marshal's Service Office.  
8 Mr. Leung has been the --

9 **THE COURT:** Well, who is the person that you deal with  
10 at the ATF?

11 **MR. SHAPIRO:** I was speaking to a man by the name of  
12 Barry Orlow, who was a lawyer or is for the ATF.

13 **THE COURT:** Can you talk to him?

14 **MR. SHAPIRO:** But then Mr. Leung became involved in  
15 that.

16 **THE COURT:** Well, whoever is going to deal with the  
17 ATF, I actually think it's better if the United States Attorney  
18 deals with this, so we have sort of one interlocutory for all  
19 these agents of the federal government, but that's up to you.  
20 I can't -- Their your clients. You have them.

21 **MR. WILSON:** Your Honor, Mr. Shapiro, at least in his  
22 view, has made a showing that the FBI hasn't conducted a  
23 thorough search. I don't think any showing has been made as to  
24 the ATF and U.S. Marshals' Service.

25 **THE COURT:** Have a discussion, have a discussion to

1 see where your points of agreement and disagreement are, but  
2 let's try to move it forward with respect to what you can do;  
3 okay?

4 **MR. SHAPIRO:** I have a discussion ongoing with the DEA  
5 lawyer.

6 **THE COURT:** Well, then you can continue discussions.  
7 Okay. Now, the state --

8 **MR. SHAPIRO:** Well, can I just -- couple other things  
9 on the federal subpoena. I got redacted documents. Those  
10 redactions were improper under the law, under FOIA.

11 **THE COURT:** I'm a little concerned about the  
12 redactions, what would be the relevant -- why would anything  
13 be -- given a protective order that's in place, where I think  
14 probably more sensitive information is being disclosed than  
15 that which is redacted necessarily, I don't know, but can you  
16 go back and revisit the redactions and see whether or not it's  
17 necessary to redact?

18 **MR. WILSON:** We're happy to look at them. We've tried  
19 to redact some personal information and some FBI --

20 **THE COURT:** Why don't you take a look at it?

21 **MR. SHAPIRO:** This was in the FBI, they claimed FOIA  
22 exceptions, and the ATF claimed tax returns exceptions.

23 **THE COURT:** Okay. What's next?

24 **MR. SHAPIRO:** If I may, Your Honor, the other point  
25 with respect to the federal subpoenas is so there are these 174



1 pages I've got to go look at, and I don't know what I received.  
2 The government has told me they're completely irrelevant.

3 **THE COURT:** Mr. Shapiro, you're not -- please don't  
4 discuss 174 pages, nothing about the 174. You look at them --

5 **MR. SHAPIRO:** Right.

6 **THE COURT:** -- and then if you have something to say  
7 about them, you can say something about them.

8 **MR. SHAPIRO:** But all I'm asking for is to be able to  
9 schedule something, so I don't have to file another motion to  
10 come back before Your Honor.

11 **THE COURT:** You're not scheduling anything. You're  
12 going to sit down and talk to Mr. Wilson. He's your new best  
13 friend.

14 **MR. SHAPIRO:** Well, here's the reason why I can't  
15 discuss them under our agreement.

16 **THE COURT:** You can discuss them with Mr. Wilson.

17 **MR. SHAPIRO:** I can't discuss them with my client or  
18 my investigator.

19 **THE COURT:** Right.

20 **MR. SHAPIRO:** So then I want to say to Your Honor  
21 these things are not what the government said they are  
22 relevant.

23 **THE COURT:** I don't know.

24 **MR. SHAPIRO:** I know, and that's --

25 **THE COURT:** And that's what I thought you actually

1 weren't going to get into a discussion about the 174 pages you  
2 have yet to see.

3 **MR. SHAPIRO:** Right. But all I'm asking for is  
4 another control date.

5 **THE COURT:** No, I'm not giving any control dates. A  
6 control date is my lifetime for good behavior. Okay. Now  
7 turning to -- that's a control date.

8 Now turning to the state. Yes. Where are we on the  
9 state, which has been very forthcoming.

10 **MR. SHAPIRO:** The problem with the state production is  
11 we got to the point where there were virtually no interview  
12 memos. The police said they documented every possible  
13 interview, so Your Honor ordered the Sheriff's Office to  
14 produce their records. I got 21 largely irrelevant transcripts  
15 of interviews, that's it.

16 So I don't have -- it's the same problem as with the  
17 federal agencies. I don't have any answers to well, what  
18 happened to all these things that people talked about? I don't  
19 disagree with you that maybe somebody decided to throw  
20 everything away, but somebody should be able to say, yeah, we  
21 threw them all away.

22 **THE COURT:** Not necessarily. I mean, as a former DA,  
23 I can tell you exactly what happened when I would move office  
24 to office. And what happens is, at least it was the practice  
25 then, maybe not the practice now, but it was the practice then

1 frequently you'd look and you see boxes and you say to  
2 somebody, *Well, what were these?* He says, *Well, those are my*  
3 *case notes in a case that --* you know, the Boston strangler or  
4 something, or some case that he had. They say, *Well, get rid*  
5 *of it. Take it with you.* They say, *No, no, I don't want it.*  
6 *Just throw it out.* That's what happens. Well, it may be  
7 terrible, maybe we shouldn't do it, but I'm just saying that --  
8 and how would anybody know? In other words, how would anybody  
9 know that I moved into Room 326 which was inherited from  
10 another deputy who was trying a case ten years before, and I  
11 look around and see these boxes and start throwing them out.  
12 The old deputy wouldn't know it, and the new deputy would have  
13 no recollection -- would have no idea what was in these files,  
14 and then it would pass deputy to deputy to deputy.

15 I'm just telling you that that's the practical -- that's  
16 what happens. Now, maybe it didn't happen in this case. I  
17 don't know. Maybe -- is it San Mateo County?

18 **MS. CRITCHFIELD:** Yes.

19 **MR. SHAPIRO:** It's the Sheriff's Office we're talking  
20 about.

21 **MS. CRITCHFIELD:** And the District Attorney's Office.

22 **THE COURT:** So maybe they work differently, but I  
23 don't -- I would be surprised.

24 **MR. SHAPIRO:** But that may be true, and I'm not  
25 disputing it, but nobody has said this is -- we have no idea

1 when they got destroyed or they would have been destroyed in  
2 about 2000.

3 **THE COURT:** But they don't know.

4 **MR. SHAPIRO:** But that's what Your Honor is saying.  
5 That doesn't -- I want them to say that.

6 **THE COURT:** Okay.

7 **MS. CRITCHFIELD:** I have declarations from the Chief  
8 Deputy District Attorney in San Mateo and the records custodian  
9 of the San Mateo County Sheriff's Office saying we have  
10 produced everything we have.

11 **THE COURT:** Well, that's not what his point is. His  
12 point is -- his point is he's not saying you're holding on to  
13 something. He's saying --

14 **MR. WILSON:** Well, actually, he did say that in his  
15 papers, Your Honor, but --

16 **THE COURT:** Well, okay, but you're not.

17 **MR. WILSON:** Thank you. I'm not.

18 **THE COURT:** Okay. So the question is what happened to  
19 documents that logically would have existed at some point and  
20 now aren't located, and he's saying he has no declaration of  
21 the fact that as to the disappearances of the documents, and  
22 the problem is -- your point is, well, nobody really knows what  
23 happened.

24 **MS. CRITCHFIELD:** True.

25 **THE COURT:** Because -- and I could certainly accept

1 that. I mean, I just think that that's the case. It happens.  
2 I don't know who does a declaration. I mean, like I could do a  
3 declaration saying well, you know, let's see, I was in about  
4 five different offices at 850 Bryant Street, or maybe ten over  
5 a period of five years, and whenever I went into an office, I  
6 don't know what I did, but it's entirely possible that I could  
7 have taken a box and put it in the trash. I mean, that's the  
8 truth, but I couldn't tell you that was my habit and custom. I  
9 couldn't tell you I did it in any particular case. I couldn't  
10 even tell you what offices I was in, except one that I liked  
11 because it was near the door and I could get out without  
12 anybody seeing me, so I liked that one. But other than that, I  
13 have no idea. I mean, that's just the way it is.

14 And I think that, you know, I just think that it's going  
15 to be too -- look, if it could be done, if somebody could say  
16 it, that's fine, in that office, but I don't know who it would  
17 be.

18 **MS. CRITCHFIELD:** I'm not sure either. The person  
19 that I have contact with or that is in charge in San Mateo is  
20 the Chief Deputy. She has verified virtually everything she's  
21 given me, everything. I'm not sure what she would represent as  
22 to what was destroyed, when it was destroyed, how it was  
23 destroyed. I mean, I suppose we could have her sign a  
24 declaration that says I don't know anything or, oh, yes, it was  
25 thrown out in 1992. I think that they've given everything they

1 have at this point.

2 And I would like to interject one point, and that is  
3 Mr. Shapiro has said over and over that there are no -- there  
4 were no interviews. In reality, I did a very quick search of  
5 the discovery that we have provided to him and found 60  
6 interviews in those records, so in fact there are many  
7 interviews that have been turned over.

8 **THE COURT:** Well, I think the way to deal with this is  
9 to see the motion. I mean, I think we're -- once the FBI has  
10 complied with these requests, and once Mr. Shapiro has viewed  
11 the 174 pages, then I think we should move on to see what the  
12 motion is going to look like.

13 **MR. SHAPIRO:** I will do that, Your Honor. But as  
14 Ms. Critchfield was just talking, she said maybe Ms. Guidotti  
15 could say this, that, or the other thing. That's what I want.  
16 That's what I asked for. I said, what happened to it?

17 **THE COURT:** Yeah, but the problem is, the problem is  
18 she doesn't know. I mean, I take that representation. I mean,  
19 I guess she could file a declaration saying I don't know what  
20 happened to them, and if that would satisfy you, which it  
21 wouldn't.

22 **MS. CRITCHFIELD:** It wouldn't.

23 **MR. SHAPIRO:** It would be better than nothing. I have  
24 nothing.

25 **THE COURT:** Pardon?

1           **MR. SHAPIRO:** I have nothing now. I just have we gave  
2     you what you got.

3           **THE COURT:** But you have the statements -- look, you  
4     have what -- I don't know if she was there at the time and had  
5     some interaction with it --

6           **MS. CRITCHFIELD:** No, she didn't.

7           **THE COURT:** -- fine, but she wasn't. So then your  
8     next question, well, of course she wasn't there, so it's not  
9     really a very useful declaration, which I agree with you, it's  
10    not a useful declaration. So you say, well, what I need to do  
11    is find who was there. Well, assuming somebody is still  
12    living, that they were there, you could locate them, that's  
13    what it turns into. And I'm not going to -- I'm just not going  
14    to go through this, you know, great historical inquiry as to  
15    what happened to these documents, because I think a certain  
16    amount of common sense kicks in, and I'd like to see your  
17    motion, that's what I'd like to see. It's either we'll see  
18    what it says, and then we'll take it from there.

19          So Thank you. Go off, and there's your protective order.

20          **MR. SHAPIRO:** Thank you.

21          **THE COURT:** And I'm sure I'll see you soon, please,  
22    within the control date that I've given you.

23                   (Proceedings adjourned at 10:35 a.m.)

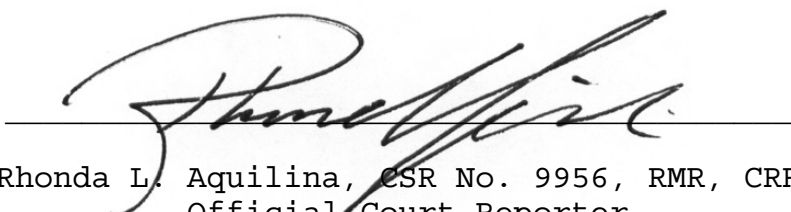
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CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript  
from the record of proceedings in the above-entitled matter.

DATE: Tuesday, September 22, 2015



Rhonda L. Aquilina, CSR No. 9956, RMR, CRR  
Official Court Reporter